

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3454 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

SRHEE KAMALIYA EDUCATION TRUST

Versus

SECRETARY

Appearance:

MR AR THACKER for Petitioner
MR VIJAY H PATEL for Respondent No. 1
MR RM DESAI for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 04/12/96

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. V.H. Patel Ld. Advocate, for respondent no.1. Service of rule is waived by Mr. Roshan Desai, Ld. Advocate, for respondents no.2 and 3.

It appears that the petitioner - trust applied for running a secondary school in village Morchupana, Ta. Palitana, Dist. Bhavnagar in a prescribed form on or about 31-8-1992 and completed all formalities in that respect. Respondent no.1 Board rejected the application on or around 19-6-1993. The petitioner therefore carried the matter in appeal before Respondent no.2. The grievance of the petitioner is that Respondent no.2 accepted the petitioner's contentions that the petitioner had required funds, required premises and required viability for starting secondary school, but dismissed the appeal on the ground that the village in which the petitioner was to start school was not mentioned in the list of the selected places. The grievance of the petitioner is that no opportunity was given to the petitioner for showing the cause against the said or ground for rejection of this appeal, else he would have shown to the Appellate Authority that village Morchupana is included in the list but is incorrectly described at Sr. No.96.

2. This Court would not like to enter into the question of fact with regard to, whether the name of the village is correctly or incorrectly set out in the list. The proper course would be to leave the matter to the Appellate Authority in the first instance.

3. Hence, in the facts of the case, the following order is passed :-

The impugned order of the Appellate Authority (respondent no.2 herein) in Appeal No.APL/2593/4/HS/A.Cell is hereby quashed and set aside and the matter is remanded to the Appellate Authority for considering the same afresh after giving opportunity to the petitioner of being heard in respect of the aforesaid cause for rejection of the appeal. The Appellate Authority will decide the matter in accordance with law after giving opportunity as stated above to the petitioner within a period of six weeks from the date of receipt of writ of this direction.

Rule is made absolute only to the aforesaid extent, with no order as to costs. D.S. is permitted.